

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7303

No. 75-7303

In The
United States Court of Appeals
For the Second Circuit

MICHAEL FERGUSON, a minor, by THERESA FERGUSON,
his parent, and on behalf of others
similarly situated

- Plaintiff-Appellant

VS

ARMAND ROY, Individually and as Mayor of the
Town of Enfield, Connecticut

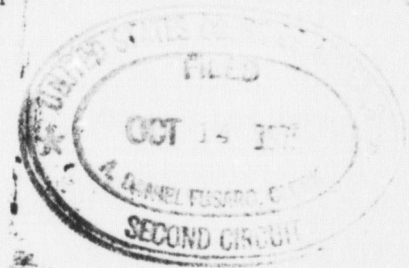
- Defendant-Appellee

APPENDIX

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INDEX

1. Motion For Preliminary Injunction	1
2. Order To Show Cause	3
3. Complaint	4
4. Verification of Complaint	12
5. Amended Complaint	13
6 Ruling on Application to Show Cause (dismissing complaint)	19

MICHAEL FERGUSON, a minor, :
by his parent, THERESA FERGUSON, :
ET AL :
Plaintiff : CIVIL ACTION NO. _____
vs :
ARMAND ROY, ET AL :
Defendants :

MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff, Michael Ferguson, a minor, by his parent Theresa Ferguson, moves this Court for a preliminary injunction to enjoin the defendants, Armand Roy, et al, their agents, employees and successors in office and all other persons in active concert with them from:

1. Depriving the plaintiff, and all others similarly situated, of his constitutional freedom of speech through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.
2. Depriving the plaintiff and all others similarly situated of rights, privileges, and immunities secured by the Constitution and laws of the United States, through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.

The grounds for plaintiff's motion are as follows:

1. On April , 1975 the plaintiff filed a complaint and application for the convening of a three-judge Court in the United States District Court of Connecticut challenging the constitutionality of Chapter VI, Section 4 of the Town of Enfield Charter, and seeking preliminary and permanent injunctions and declaratory relief. The defendants were served with a copy of the summons and complaint on , 1975.
2. In the past two years, 1973 and 1974, the Town of Enfield has held public meetings on April 23rd to consider the Town Budget for the year. At the public meeting on April 23, 1973,

- 2 -

plaintiff, and others, were deprived of their freedom of speech pursuant to Chapter VI, Section 4 of the Enfield Town Charter.

3. As has been customary, it is expected that the Town Council's public meeting, where the Town Budget will be considered, will be held around the third week in April, 1975. Plaintiff, neither a taxpayer nor elector, fears he will be denied the right to be heard at that meeting, as he was in 1973.

4. If the plaintiff is denied his freedom of speech at this year's public meeting the positions of the parties that existed at the filing of this lawsuit would be substantially altered to the detriment of the plaintiff.

5. The defendants would suffer significantly less injury under an injunction than the plaintiff would suffer if an injunction is not granted. The due inconvenience would be suffered by the defendants if an injunction is granted.

6. The defendants' actions in denying the plaintiff and others similarly situated their freedom of speech at public town meetings are causing or are threatening to cause immediate and irreparable injury to the plaintiff. The plaintiff has no adequate remedy at law.

7. The plaintiff will probably prevail on the merits.

8. A Brief-Memorandum is attached hereto in support of this motion.

BY:

Frank Cochran
Attorney for Plaintiff

Of Counsel
Alan Jay Rom

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

3

MICHAEL FERGUSON, a minor, by :
his parent, THERESA FERGUSON, :
ET AL :

Plaintiff

vs

CIVIL ACTION NO. _____

ARMAND ROY, ET AL

Defendants

ORDER TO SHOW CAUSE

This case coming on to be heard on plaintiff's motion for a preliminary injunction against the defendants, Armand Roy, et al, their agents, employees and successors in office, and it appearing from the allegations of the complaint and the motion for a preliminary injunction, that the plaintiff is entitled to a preliminary injunction requested unless good cause to the contrary is shown, it is hereby

ORDERED, that the defendants, Armand Roy, Frank Mancuso and Samuel Kissenger appear before the Honorable United States District Judge; at the United States Court House in Hartford, Connecticut, at _____ o'clock in the _____ m. on _____, 1975, and show cause, if any, why the Court should not issue a preliminary injunction as prayed for in plaintiff's motion.

FURTHER ORDERED, that the United States Marshall serve copies of this order on the defendants forthwith, together with copies of the motion for a preliminary injunction.

UNITED STATES DISTRICT JUDGE

Dated: _____, 1975

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

4

MICHAEL FERGUSON, a minor, :
by THERESA FERGUSON, his :
parent, individually and on :
behalf of all others similarly :
situated, Kennedy Junior High :
School Student Council and :
Kosciuszko Junior High School :
Student Council and Enfield High :
School Student Council :
Plaintiffs : CIVIL ACTION NO. 75-122

vs

ARMAND ROY, individually :
and in his official capacity :
as Mayor of the Town of :
Enfield, FRANK MANCUSO, :
individually and in his :
official capacity as the :
former Mayor of Enfield, : COMPLAINT AND APPLICATION
and SAMUEL KISSENGER, : FOR A THREE-JUDGE COURT
individually and in his :
official capacity as Town :
Manager of the Town of Enfield :
Defendants :

I. JURISDICTION

1. The named plaintiffs, individually and on behalf of all others similarly situated, challenge the constitutionality of Chapter VII, Section 4 of the Town Charter of the Town of Enfield, Connecticut. This challenge is based on: a) the deprivation of the plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution, and b) the deprivation of the plaintiff's civil rights under 42 U.S.C. Section 1983.

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1343 (3) and (4) this being an action for the redress of the deprivation, under color of law, of rights, privileges and immunities secured by the Constitution and laws of the United States.

- 2 -

3. The plaintiffs' action for injunctive and declaratory relief is brought pursuant to 42 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284 because the plaintiffs seek injunctions: a) to restrain the defendant Town of Enfield officials in the enforcement, operation and/or execution of a provision of the Enfield Charter which is violative of the United States Constitution, and b) to restrain the defendant Town of Enfield officials in the enforcement, operation, and/or execution of a provision of the Enfield Charter which is violative of the United States Constitution in its application to the plaintiffs.

II. PARTIES

5. Plaintiff, Michael Ferguson, is a citizen of the United States and of the State of Connecticut. He is currently a junior at the Enfield High School.

5a. The Kennedy Junior High School Student Council is a body representative of the students of Kennedy Junior High School in Enfield. It is an unincorporated association, whose members and constituents are residents of Enfield and students at the school.

5b. The Kosciuszko Junior High School Student Council is a body representative of the students of Kosciuszko Junior High School in Enfield. It is an unincorporated association whose members and constituents are residents of Enfield and students at the school.

5c. The Enfield High School Student Council is a body representative of the students of Enfield High School in Enfield. It is an unincorporated association whose members and constituents are residents of Enfield and students at the school.

5d. The Enfield HSSC, Kennedy JHSSC and Kosciuszko JHSSC desire to appear at the 1975 budget hearing to speak and petition said council concerning matters before the Town Council at that time. They have been informed that they will not be permitted to speak at said meeting.

CLASS ACTION ALLEGATIONS

6. Plaintiff Michael Ferguson brings this action in his own behalf and on behalf of all others similarly situated pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. The class consists of all persons who are neither electors or taxpayers of the Town of Enfield, who desire to exercise their freedom of speech at public Town Council meetings of the Town of Enfield, and who have been or will be denied that right.

7. This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class; the claims of the named plaintiffs are typical of the claims of the class, and the named plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as whole.

DEFENDANTS

8. Defendant, Armand Roy, is a citizen of the United States and the Mayor of the Town of Enfield, Connecticut and is ultimately responsible for the enforcement and operation of the Town Charter of the Town of Enfield, Connecticut.

9. Defendant, Frank Mancuso, is a citizen of the United States and was the Mayor of the Town of Enfield, Connecticut, and was ultimately responsible for the enforcement and operation of the Town Charter of the Town of Enfield, Connecticut at the time when plaintiffs' freedom of speech was denied, infra.

10. Defendant, Samuel Kissenger, is a citizen of the United States and is the Town Manager of the Town of Enfield, Connecticut and was the Town Manager of said town at the time when plaintiffs' freedom of speech was denied, infra.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION

11. On or about April 23, 1973, plaintiff, Michael Ferguson was a member of the student council at the John F. Kennedy Junior High School in Enfield, Connecticut.

- 4 -

12. On or about April 23, 1973, the Town Council held a public hearing to consider the annual budget at the Enfield High School in Enfield, Connecticut.

13. Anyone who wished to speak at that meeting was required to sign a pre-registration list provided at a table in the auditorium where the meeting was held. An Assistant Town Clerk assisted persons at the table.

14. Plaintiff Ferguson desired to speak at the meeting regarding the budget for the Board of Education. He was representing the student council of the John F. Kennedy Junior High School and had a petition signed by many fellow students in support of a resolution by the student council not to reduce the amount of the budget allocated to the Board of Education. The year before, with few people in attendance, the Town Council had reduced the budget of the Board of Education.

15. Plaintiff Ferguson approached the table to sign the pre-registration list as did other students. The Assistant Town Clerk did not allow him to sign the list. When plaintiff insisted on his right to be heard, the Clerk referred him to the defendant, Mancuso.

16. Defendant Mancuso told the plaintiff Ferguson that he could not speak because a provision of the Town Charter, attached hereto as Exhibit "A", prohibited anyone who was not an elector or taxpayer from speaking at public meetings.

17. Other students who attempted to speak were refused when they approached the microphone. No person was refused other than students. Still other students whom plaintiff knew desired to be heard, were deterred after seeing what had transpired.

18. No voter or taxpayer was refused the opportunity to speak. Numerous other persons did in fact speak at said meeting.

19. The Defendants have selectively enforced Chapter VI of the Enfield Town Charter. At the Annual Town Council meeting in 1974, wherein the Town Budget was considered, other persons who were neither an elector nor taxpayers, were permitted to speak in support of a reduced budget for the Board of Education.

20. The Enfield Town Charter, Chapter VI, Section 4, unconstitutionally circumscribes the plaintiffs' freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution in that it constitutes an arbitrary and unreasonable exercise of the police powers of the Town of Enfield, Connecticut.

IRREPARABLE HARM

21. Plaintiffs have no adequate remedy at law. The Town Council meeting wherein the budget will again be considered, will be held in April. Unless and until the relief demanded in this complaint is granted, plaintiffs will continue to suffer irreparable injury as a result of the actions of the defendants.

WHEREFORE, the plaintiffs respectfully pray that this COURT:

- a) Assume jurisdiction of this action.
- b) Convene a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284 to determine this controversy.
- c) Declare that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.
- d) Enter preliminary and permanent injunctions enjoining all of the defendants from depriving the plaintiffs their freedom of speech through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.
- e) Enter a final judgment declaring Chapter VI, Section 4 of the Enfield Town Charter unconstitutional in that the restriction on the freedom of speech at public meetings to electors or taxpayers arbitrarily and unreasonably interferes with the plaintiffs' freedom of speech, in violation of the First and Fourteenth Amendments to the Constitution of the United States.
- f) Enter a final judgment declaring Chapter VI, Section 4 of the Enfield Town Charter unconstitutional as applied to the plaintiff in that the restriction of the freedom of speech

at public meetings to electors or taxpayers arbitrarily and unreasonably interferes with the plaintiffs' freedom of speech, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

g) Grant the plaintiffs compensatory damages, attorney fees and costs in this action.

h) Grant the plaintiffs and all others similarly situated such additional relief as this Court may deem just, proper and equitable.

SECOND CAUSE OF ACTION

22. Plaintiffs allege and re-allege paragraphs 1 through 19 and 21 with the same force and effect as if fully set forth herein.

23. The defendant's actions pursuant to Chapter VI Section 4 of the Enfield Town Charter deny the plaintiff class equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution in that

a) They regulate the time and place of exercise of plaintiffs' fundamental right of free speech, forbidding the same in Town Council meetings only when engaged in by the class of plaintiffs, and no compelling public interest supports the classification, and

b) Said restrictions are enforced only against students.

WHEREFORE, the plaintiffs respectfully pray that this Court:

a) Assume jurisdiction of this action.

b) Convene a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284 to determine this controversy.

c) Declare that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

d) Enter preliminary and permanent injunctions enjoining all of the defendants from depriving the plaintiffs of rights, privileges, and immunities secured by the Constitution and laws of the United States, through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.

e) Enter a final judgment declaring that the defendants' actions pursuant to Chapter VI, Section 4 of the Enfield Town Charter unconstitutional, in that it deprives the plaintiffs of the rights, privileges and immunities secured by the Constitution and laws of the United States in violation of the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. Section 1983.

f) Enter a final judgment declaring that the defendants' actions pursuant to Chapter VI, Section 4 of the Enfield Town Charter unconstitutional, as applied to the plaintiffs, in that it deprives the plaintiffs of the rights, privileges and immunities secured by the Constitution and laws of the United States in violation of the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. Section 1983.

g) Grant the plaintiffs compensatory damages, attorney fees and costs in this action.

h) Grant the plaintiffs and all others similarly situated such additional relief as this Court may deem just, proper and equitable.

THE PLAINTIFFS

s/ Frank Cochran

By: FRANK COCHRAN
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Of Counsel: Alan Jay Rom

s/ Eliot Nerenberg
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ATTORNEYS FOR THE PLAINTIFF

STATE OF CONNECTICUT:

SS

HARTFORD, MARCH 19, 1975

COUNTY OF HARTFORD:

VERIFICATION OF COMPLAINT

Personally appeared MICHAEL FERGUSON, a minor, by his parent, THERESA FERGUSON, Plaintiff in the above-entitled action and verifies that he has read the above complaint and, to the best of his knowledge, all of the facts stated therein were true.

s/ Michael D. Ferguson
MICHAEL FERGUSON

s/ Theresa Ferguson
THERESA FERGUSON

Subscribed and sworn to before me this 19th day of March 1975.

s/ Alan Jay Rom
COMMISSIONER OF THE SUPERIOR
COURT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MICHAEL FERGUSON, a minor, : CIVIL ACTION NO. H-75-122
by THERESA FERGUSON, his :
parent, individually and on :
behalf of all others :
similarly situated, :
Plaintiffs :
vs. :
ARMAND ROY, individually :
and in his official capacity :
as Mayor of the Town of :
Enfield, :
Defendants : AMENDED COMPLAINT

I. JURISDICTION

1. The named plaintiff, individually and on behalf of all others similarly situated, challenge the constitutionality of Chapter VII, Section 4 of the Town Charter of the Town of Enfield, Connecticut. This challenge is based on: a) the deprivation of the plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution, and b) the deprivation of the plaintiff's civil rights under 42 U.S.C. Section 1983.

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1343 (3) and (4) this being an action for the redress of the deprivation, under color of law, of rights, privileges and immunities secured by the Constitution and laws of the United States.

3. The plaintiff's action for injunctive and declaratory relief is brought pursuant to 42 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

II. PARTIES

4. Plaintiff, Michael Ferguson, is a citizen of the United States and of the State of Connecticut, and a resident of the Town of Enfield. He is currently a junior at the Enfield High School.

CLASS ACTION ALLEGATIONS

5. Plaintiff Michael Ferguson brings this action on his own behalf and on behalf of all others similarly situated pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. The class consists of all persons who are neither electors nor taxpayers of the Town of Enfield, who desire to exercise their freedom of speech at public hearings held by the Council on the Budget of the Town of Enfield, and who have been or will be denied that rights (sic).

6. This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class; the claims of the named plaintiff is typical of the claims of the class, and the named plaintiff will fairly and adequately protect the interests of the class. The defendant has acted on the grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

DEFENDANT

7. Defendant, Armand Roy, is a citizen of the United States and the Mayor of the Town of Enfield, Connecticut, and is ultimately responsible for the enforcement and operation of the Town Charter of the Town of Enfield, Connecticut.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION

8. On or about April 23, 1973, plaintiff, Michael Ferguson was a member of the student council at the John F. Kennedy Junior High School in Enfield, Connecticut.

9. On or about April 23, 1973, the Council on the Budget held a public hearing to consider the annual budget at the Enfield High School in Enfield, Connecticut.

- 3 -

10. Anyone who wished to speak at that meeting was required to sign a pre-registration list provided at a table in the auditorium where the meeting was held. An Assistant Town Clerk assisted persons at the table.

11. Plaintiff Ferguson desired to speak at the meeting regarding the budget for the Board of Education. He was representing the student council of the John F. Kennedy Junior High School and had a petition signed by many fellow students in support of a resolution by the student council not to reduce the amount of the budget allocated to the Board of Education. The year before, with few people in attendance, the Council on the Budget had reduced the budget of the Board of Education.

12. Plaintiff Ferguson approached the table to sign the pre-registration list as did other students. The Assistant Town Clerk did not allow him to sign the list. When plaintiff insisted on his right to be heard, the Clerk referred him to the defendant, Mancuso.

13. Defendant Former Mayor Frank Mancuso told the plaintiff Ferguson that he could not speak because a provision of the Town Charter, attached hereto as Exhibit "A", prohibited anyone who was not an elector or taxpayer from speaking at public meetings.

14. Other students who attempted to speak were refused when they approached the microphone. No person was refused other than students. Still other students whom plaintiff knew desired to be heard, were deterred after seeing what had transpired.

15. No voter or taxpayer was refused the opportunity to speak. Numerous other persons did in fact speak at said meeting.

16. The defendant has selectively enforced Chapter VI of the Enfield Town Charter. At the annual meeting ^{meeting (sic)} of the Council on the Budget in 1974, wherein the Town Budget was considered, other persons who were neither an elector nor taxpayers, were permitted to speak in support of a reduced budget for the Board of Education.

- 4 -

17. The Enfield Town Charter, Chapter VI, Section 4, unconstitutionally circumscribes the plaintiff's freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution, in that it constitutes an arbitrary and unreasonable exercise of the police powers of the Town of Enfield, Connecticut, and in that it is an impermissibly broad and vague regulation of speech.

IRREPARABLE HARM

18. Plaintiff has no adequate remedy at law. The public hearing wherein the budget will again be considered, will be held on April 28, 1975. In future years, budget hearings will be held. Unless and until the relief demanded in this complaint is granted, plaintiff will continue to suffer irreparable injury as a result of the actions of the defendant.

SECOND CAUSE OF ACTION

19. Plaintiff alleges and re-alleges paragraphs 1 through 16 and 18 with the same force and effect as if fully set forth herein.

20. The defendant's actions pursuant to Chapter VI Section 4 of the Enfield Town Charter deny the plaintiff class equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution in that:

a) They regulate the time and place of exercise of plaintiff's fundamental right of free speech, forbidding the same in Council on the Budget meetings only when engaged in by the class of plaintiffs, and no compelling public interest supports the classification; and

b) Said restrictions are enforced only against students.
WHEREFORE, the plaintiff respectfully prays that this COURT:

a) Assume jurisdiction of this action.

b) Certify that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

c) Enter preliminary and permanent injunctions enjoining the defendant from depriving the plaintiff class their freedom of speech through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.

d) Enter a final judgment declaring Chapter VI, Section 4 of the Enfield Town Charter unconstitutional in that the restriction on the freedom of speech at public hearings and meetings electors or to taxpayers interferes with the plaintiff's freedom of speech, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

e) Enter preliminary and permanent injunctions enjoining the defendant from depriving the plaintiff class of the equal protection of the laws secured by the Constitution and laws of the United States, through the continued enforcement, operation and/or execution of Chapter VI, Section 4 of the Enfield Town Charter.

f) Enter a final judgment declaring that the defendant's actions pursuant to Chapter VI, Section 4 of the Enfield Town Charter violate plaintiff's right to equal protection of the laws secured by the Constitution and laws of the United States in violation of the First and Fourteenth Amendments to the Constitution of the United States.

g) Grant the plaintiff and all others similarly situated such additional relief as this Court may deem just, proper and equitable.

THE PLAINTIFF

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ATTORNEYS FOR THE PLAINTIFF

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL FERGUSON, a minor by :
THERESA FERGUSON, his parent :

-vs-

Civil No. H 75-122

ARMAND ROY, Individually & in :
his official capacity as Mayor :
of the Town of Enfield :

RULING ON APPLICATION
FOR ORDER TO SHOW CAUSE

The plaintiff, a seventeen-year old, third year high school student, resides with his parents in the Town of Enfield, Connecticut. The defendant Roy is being sued individually and in his official capacity as Mayor of that community. The complaint challenges, on constitutional grounds, a provision of the Enfield Town Charter limiting the right to speak at the annual town budget hearing to those who are either electors or taxpayers.^{1/} The plaintiff alleges a violation of his constitutional rights to freedom of speech and equal protection under the first and fourteenth amendments to the United States Constitution. The action is brought in this Court under 42 U.S.C. Section 1983 and its jurisdictional counterpart, 28 U.S.C. Section 1343. He is asking for a preliminary injunction granting him the right to speak at the budget hearing to be held on the evening of April 28, 1975, certification of the suit as a class action, and a permanent injunction based on the alleged unconstitutionality of the Charter provisions.

After the show cause application had been filed, counsel for all parties were notified of the scheduling of a hearing. At said hearing the defendant's counsel challenged the plaintiff counsel's authority to name as plaintiffs in said action the student councils in the two junior high schools, as well as the senior high school in said Town of Enfield. He also raised the issue, as to the need for including as named defendants anyone

- 2 -

except Armand Roy, the incumbent Mayor. Counsel for the plaintiff agreed to file an amended complaint omitting these challenged and unnecessary parties and to withdraw any claim for a three-judge court. Such an amendment to the complaint was filed on April 23, 1975.

The Town of Enfield exists as a Council-Manager form of government, and operates under a Charter enacted pursuant to Conn. Gen. Stat. Section 7-188. It requires that the annual budget shall be presented by the Town Manager to the Town Council, and that the latter shall adopt a budget and set a tax rate for the ensuing fiscal year. Chapter VI, Section 4 of the Charter, the section with which this action is concerned requires that the Council hold at least one "public hearing--at which any elector or taxpayer may have an opportunity to be heard regarding appropriations for the ensuing fiscal year.

The Town Counsel, who appeared for the defendant, represented that as parliamentarian adviser for such meetings the regular and customary procedure followed with regard to such matters at annual budget hearings is that those persons who desire to speak are required to register with the clerk of the meeting by giving their names and addresses, prior to their being recognized to speak. As a practical matter, however, those residents who are over 18 years of age and are eligible to be electors, are considered such, without checking the name of each prospective speaker on the last completed voting list. Those persons who live outside the Town of Enfield, and who are not taxpayers, are not allowed to speak; nor are those who are under eighteen years of age, because the latter could not possibly qualify as electors, because of their age. However, any local resident of Enfield eighteen years of age or over is permitted to speak, whether or not he is actually registered as an elector in the town. It should be noted that those who do appear or are permitted to speak at the annual budget hearing do not actually vote on the adoption or rejection of the budget. The Charter provides that within twenty days of the public hearing, the members of the Council "shall adopt by resolution a budget and file the same with the Town Clerk"

The plaintiff alleges that approximately two years ago, in April 1973, he attempted to register with the Assistant Town

- 3 -

Clerk to speak at the annual budget hearing, and was refused permission to do so. He was referred to the then Mayor of the Town, who advised him that a provision in the Town Charter prohibited anyone not an elector or taxpayer from speaking at the hearing. The plaintiff now claims that he desires to speak at the upcoming annual budget hearing scheduled for April 28, 1975, but anticipates that he will be prevented from doing so, by the Town's enforcement of Chapter VI, Section 4 of the Charter.

A separate provision of this Charter, Chapter III, Section 4, requires the Town Council to hold a "regular meeting which shall be scheduled not less than once each month" The written rules governing procedure at these monthly Council meetings provide for the presentment of "Public Communications and Petitions" on the meeting's agenda, wherein "[a]ny public member desiring to address the Council shall be recognized by the Chair." The plaintiff admits that he is not barred from speaking at these regular monthly meetings of the Town Council, and that he has in fact spoken at them in the past. Neither does he attack the time limitations placed upon speakers at the annual budget hearing. His complaint is confined to the narrow clear-cut legal issues raised by the Charter provision, which effectively excludes him from speaking at that budget hearing.

The plaintiff claims that the first amendment to the federal constitution affords him a broad, unrestricted right to speak at the annual public budget hearing. However, it is a principle basic to our concept of ordered government that the fundamental right of free speech, even when exercised in public places, is subject to certain reasonable restrictions. Cf. Cox v. Louisiana, 379 U.S. 536, 554 (1965). Moreover, this is not a case in which the plaintiff has been prevented from expressing his views in a public place on the basis of the content of what he has to say; a purpose which would clearly run afoul of the first amendment. See, Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972). It is clear to this Court that the protections of the first amendment do not apply under all circumstances with the same force to minors as to adults. Cf. Prince v. Massachusetts, 321 U.S. 158 (1944); Ginsburg v. New York, 390 U.S. 629 (1968); Goss v. Lopez, 43 U.S.L.W. 4181, 4189 (U.S. Jan. 22, 1975) (Powell, J., dissenting).

- 4 -

Even though the Court accepts the allegations of the complaint to be valid on their face, the plaintiff has made absolutely no showing of any likelihood of success on the merits. The plaintiff relies heavily on the so-called "right to vote" cases, e.g., Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969); Carrington v. Rash, 380 U.S. 89 (1965), yet no issue is raised in this action as to the validity of the eligibility requirements imposed on voters in the Town's elections. The plaintiff has also failed to demonstrate that the enforcement of the Charter provision involves the infringement of any unqualified right to free speech. There is no need, therefore, to consider whether the Town has shown any "compelling interest" in maintaining its policy. Similarly, viewing the claim in equal protection terms, the plaintiff has not shown that the challenged portion of the Enfield Charter creates any suspect classification, such as race, alienage or nationality, which would subject the speaker policy to a "strict scrutiny" type of analysis.

The Court finds that the eighteen-year-old age limitation established by Chapter VI, Section 4 of the Charter creates a classification which is reasonably related to the objectives to be accomplished. The Town has a strong interest in the orderly and efficient manner in which its residents' views on the budget are presented to the Town Council. While it is an admirable objective to encourage young people to become interested in, and even participate in, the processes of government, the annual budget meeting is neither the time nor the place to further that objective. That meeting is already operated under severe time restraints, and has in the past lasted as late as three o'clock in the morning. The plaintiff has had an ample opportunity to make his views known in other ways. He has appeared at the regularly (sic) monthly Council meetings; he may file petitions or personally contact Council members concerning the budget; and presumably, he may even arrange to have his views presented by someone who is entitled to speak at the annual budget meeting.

The Town of Enfield's restriction on speakers at its annual budget hearing reflects a long-standing State policy. The Connecticut General (sic) Statutes, Section 7-6, ² establish the same restriction for all towns in the State which do not have specific provisions governing this question in their charters. The interference by this Court with the operation of this reasonable policy would mark an unwarranted intrusion into the local affairs of the Town of Enfield.

An order to show cause is normally entered in matters such as this, unless it clearly appears on the face of the application that there is no possible basis for granting injunctive relief. The Court finds that there is no valid basis in this case. The issue presented is a narrow one, and has been briefed and argued by counsel for both parties. Accordingly, the request for an order to show cause is denied and the action is dismissed. SO ORDERED.

Dated at Hartford, Connecticut, this 28th day of April, 1975.

s/ T. Emmet Clarie

T. Emmet Clarie
Chief Judge

1/ Under Chapter VI, Section 4 of the Charter, the Council is required to hold at least one "public hearing--at which any elector or taxpayer may have an opportunity to be heard regarding appropriations for the ensuing fiscal year."

2/ Conn. Gen. Stat. Section 7-6 provides in pertinent part:

"At any town meeting other than a regular or special town election . . . , any person who is an elector of such town may vote and any citizen of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars, on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption . . . may vote, unless restricted by the provisions of any special act relating to such town"